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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DAVID LEE, an individual, on behalf of
himself and on behalf of others similarly
situated,

Plaintiffs,

v.

THE TIMBERLAND COMPANY, a New
Hampshire corporation conducting business
in the State of California, and Does 1-100,

Defendants.

Case No. 5:07-cv-02367-JF

Date: June 13, 2008
Time: 9:00 a.m.
Judge: Hon. Jeremy Fogel

**JOINT MOTION FOR APPROVAL OF
SETTLEMENT AND ENTRY OF
STIPULATED JUDGMENT**

PLEASE TAKE NOTICE that on June 13, 2008, at 9:00 a.m. or as soon thereafter as counsel may be heard, in Courtroom 3 of the above-entitled Court, located at 280 South First Street, San Jose, California 95113, Plaintiffs and Defendant Timberland Retail, Inc. ("Timberland") will jointly and hereby do move the Court for Approval of Settlement of Plaintiffs' claims under the Fair Labor Standards Act.

1 The Plaintiffs in this collective-action matter and Timberland, seek approval of their settlement
 2 of Plaintiffs' claims under the Fair Labor Standards Act, 29 U.S.C. § 201-219, and entry of a stipulated
 3 judgment. The fourteen Plaintiffs each executed a Confidential Settlement Agreement and Release of
 4 All Claims with Timberland, ("Agreements"). Copies of those Agreements are attached for the Court's
 5 review. Timberland has approved the terms of the enclosed Agreements and all Agreements have been
 6 fully executed.

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 The parties wish to resolve Plaintiffs' claims of failure to pay overtime wages in violation of the
 9 Fair Labor Standards Act ("FLSA"). Section 216(c) of the FLSA states that the Secretary of the United
 10 States Department of Labor is "authorized to supervise" any settlement of claims for unpaid wages or
 11 unpaid overtime compensation under the FLSA. 29 U.S.C. § 216(c). The United States Supreme
 12 Court interprets this language to render invalid any release of claims under the FLSA that is not
 13 subjected to this supervision and approval process. *See D. A. Schulte v. Gangi*, 328 U.S. 108, 115
 14 (1946).¹

15 It is important to note that both *Gangi* and *O'Neil* involved the settlement of prelitigation
 16 claims of FLSA violations. However, the *Gangi* Court noted in dicta that Congress's intention to
 17 prevent private, unsupervised compromises of alleged FLSA violations (which could conceivably
 18 result in private agreements to pay employees less than what is mandated under the law) would be
 19 sufficiently satisfied in circumstances where litigation ensues and a proposed settlement is reviewed by
 20 the Court, rather than the Department of Labor. "Even though stipulated judgments may be obtained,
 21 where settlements are proposed in controversies between employers and employees over violations of
 22 the Act, by the simple device of filing suits and entering agreed judgments, we think the requirement of
 23 pleading the issues and submitting the judgment to judicial scrutiny may differentiate stipulated
 24 judgments from compromises by the parties." *Id.* at 113 n.8.

25
 26
 27 ¹ The *Gangi* Court extended the analysis supplied in *Brooklyn Savings Bank v. O'Neil*, 324 U.S.
 28 697 (1945), which held that a release pursuant to an unsupervised settlement of undisputed claims was
 invalid, but declined to address whether an unsupervised settlement of a bona fide dispute would have
 the same consequence. *Brooklyn Sav. Bank*, at 714.

1 In *Jarrad v. Southeastern Shipbuilding Corp.*, 163 F.2d 960 (5th Cir. 1947), the Fifth Circuit
2 held that a stipulated judgment on employees' claims for back pay under the FLSA entered by a
3 Georgia court upon review of a settlement agreement between the parties was *res judicata* to the same
4 employees' subsequent lawsuit for liquidated damages for the same alleged violations. See *Jarrad* at
5 961; *DeBraska v. City of Milwaukee*, 11 F. Supp.2d 1020, 1026-1027 (E.D. Wis. 1998) (holding that
6 court-approved settlement of FLSA claim constitutes final judgment with *res judicata* effect); *Cf. Yue*
7 *Zhou v. Wang's Restaurant*, 2007 WL 172308, *1 (N.D. Cal. 2007) (holding that proper procedure for
8 obtaining court approval of the settlement of FLSA claims is for the parties to present to the Court a
9 proposed settlement, upon which the District Court may enter a stipulated judgment only after
10 scrutinizing the settlement for fairness) (citing *Gangi*, at 113 n.8; *Jarrad*, at 961; *Lynn's Food Stores,*
11 *Inc. v. United States, Etc.*, 679 F.2d 1350, 1353 (11th Cir. 1982) (holding that employer's filing of
12 action seeking judicial approval of settlement negotiated and agreed upon outside the context of
13 litigation is not acceptable means of settlement under FLSA; "The only...route [other than direct
14 supervision by the Department of Labor] for compromise of FLSA claims is provided in the context of
15 suits brought directly by employees against their employer under section 215(b) to recover back wages
16 for FLSA violations. When employees bring a private action for back wages under the FLSA, and
17 present to the district court a proposed settlement, the district court may enter a stipulated judgment
18 after scrutinizing the settlement for fairness.")).

CONCLUSION

Accordingly, and in order to ensure that the release of all claims contained within the parties' proposed settlement agreements are valid and enforceable, the parties present the attached Confidential Settlement Agreements and Releases of All Claims for the Court's review. (Exhibit 1) Upon the Court's finding that the Settlement Agreements are fair, the parties respectfully request that the Court enter the Proposed Order of Dismissal and Stipulated Judgment.

Dated: March 28, 2008

AKIN GUMP STRAUSS HAUER & FELD LLP

By /s/ Fraser A. McAlpine
Fraser A. McAlpine

Attorneys for Defendant
THE TIMBERLAND COMPANY
(Correctly named and identified as
Timberland Retail, Inc.)

Dated: March 28, 2008

LAW OFFICES OF STEPHEN A. MORRIS

By /s/ Stephen B. Morris
Stephen A. Morris

Attorneys for Plaintiffs